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Phoenix, Arizona 85007

Robert R. Corbin

June 1, 1987

Mr. Charles W. Herf
Wentworth, Lundin & Herf
3500 Valley Bank Center
201 North Central Avenue
Phoenix, Arizona 85073

Re: I87-077 (R87-062)

Dear Mr. Herf:

Pursuant to A.R.S. § 15-253(B) this office has reviewed the opinions expressed in your March 20, 1987, letter to Dr. Janice Johnson, President of the Washington Elementary School District Governing Board. We concur with your conclusion that the Joint Legislative Committee on Career Ladder's rejection of Washington's 1987-88 career ladder proposal does not affect the 1986-87 school district budget.

We revise the remainder of your opinion and conclude that the \$1.2 million appropriation for the 1986-87 fiscal year does not become a part of the base level for fiscal year 1987-88. The legislature resolved any perceived conflict between the definition of base level, A.R.S. § 15-901(B)(2) and the provision allowing budgeting for career ladder programs, Laws 1986 (2nd Reg. Sess.) Ch. 364, § 4(3), by enacting A.R.S. § 15-953 which states:

If a school district receives approval to calculate its budget using an increase in the base level as provided in section 15-913 or 15-952 or any other law for a given fiscal year, that increase in the base level applies only to the fiscal year for which approval was given. In order to calculate its budget using an increase in the base level for any subsequent fiscal year the school district must receive specific approval to do so as prescribed by law.

Laws 1987 (1st Reg. Sess.) Ch. 235.

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The provision was passed as an emergency measure and became effective on May 7, 1987 when the Governor approved it. Any increase in base level Washington Elementary School District received for an approved career ladder program in fiscal year 1986-87 may not be included in the 1987-88 base level because the district failed to obtain approval as prescribed by law.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bob Corbin".

BOB CORBIN
Attorney General

BC:TLM:DPS:gm

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PETER KIEWIT, JR.

March 20, 1987

HAND DELIVERED

Dr. Janice Johnson
Governing Board President
Washington Elementary School District
8610 North 19th Avenue
Phoenix, Arizona 85021

Re: Washington Elementary School District
Career Ladder Program Funding

Dear Jan:

This is in response to your inquiry regarding career ladder funds and the budget of the Washington Elementary School District. We will recite the facts as we understand them, the issues the District desires to have us address, and discuss the legislation and case applicable law to each issue.

Since the fall of 1984, Washington Elementary School District ("Washington") has developed and implemented a pilot career ladder program within the District pursuant to the requirements of Laws 1984, Ch. 346; Laws 1985, Ch. 177; Laws 1986, Ch. 364. The 1985 and 1986 legislation provide for the establishment of a Joint Legislative Committee on career ladders and charge the committee with primary responsibility for reviewing and approving school district requests to budget for career ladder programs. The District presently has a career ladder program in effect for the 1986-87 Budget year; however, the career ladder proposal submitted by Washington for the 1987-88 budget year failed to be approved by the Joint Legislative Committee on December 17, 1986.

School Districts which participate in the career ladder program receive additional funding from the State for the purpose of paying increased compensation to teachers involved in the program. During the 1986-87 school year Washington received \$1,277,000 in additional budget monies from the State to fund its career ladder program. The Joint Legislative Committee's refusal to approve Washington's plan for the next school year has prompted the District to raise the following questions.

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ISSUES

1. Whether the Committee's rejection of Washington's proposal for the 1987-88 school year places at risk the \$1.2 million appropriation that is already incorporated into the District's 1986-87 school budget.

2. Whether the Committee's rejection of Washington's 1987-88 proposal requires the District to return to its pre-1986 salary base level when formulating its budget for the 1987-88 school year resulting in reduced teacher salaries as a result of career ladder participation.

CONCLUSIONS

1. It appears that the legislature cannot withhold any portion of the \$1.2 million appropriation from Washington during the 1986-87 school year.

2. The District has the right to include the \$1.2 million in Washington's base level budget amount for FY 1987-88.

DISCUSSION

A. Status of the FY 1986-87 \$1.2 Million Appropriation.

The 1986-87 school year budget for Washington provides for a salary base level in excess of \$25 million. The District's proposed career ladder plan was approved by the Joint Legislative Committee in June of 1986. Pursuant to § 6(A) of Chapter 364 of the Laws of 1986 ("Chapter 364"), the District was permitted to calculate its budget using a 2.5% increase in its base salary level to fund the program. This increase amounted to \$1,227,000 in additional monies for Washington.

Washington has raised the question of whether the District's failure to receive approval to continue to budget to implement a career ladder program in the upcoming 1987-88 school year provides the State Legislature with any basis to withhold payment of the funds already budgeted for the current 1986-87 school year. A review of the language of Chapter 364 and the correspondence between the Joint Legislative Committee and the District suggests that Washington is entitled to and will receive the entire \$1,277,000 appropriation.

The District's 1986-87 Budget was adopted on May 22, 1986. Subsequent to the Budget's adoption, the District received approval to budget to implement the career ladder program during

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the 1986-87 school year. The Department of Education authorized Washington to use a base level figure of \$2,137.58.

By letter dated December 29, 1986, the Joint Legislative Committee informed the District that its application "to continue to budget to implement its Career Ladder Program for fiscal year 1987-88" had not been approved. The basis for the Committee's disapproval of Washington's plan was the District's failure or unwillingness to revise its plan to comply with additional requirements that the Committee had adopted on October 1, 1986. The new requirements cannot retroactively be applied to the career ladder programs in effect during the 1986-87 school year because those plans were approved by December 7, 1985. See Cheney v. Arizona Superior Court for Maricopa County, 144 Ariz. 446, 698 P.2d 691 (1985) (Statute will have only prospective effect unless it was intended to have retroactive effect, and legislature must expressly declare intent in the Statute that it applies retroactively). Further, the new "regulations" are specifically identified as supplementing the requirements in S.B. 1384, (i.e. Laws 1986, Ch. 364). Chapter 364 did not go into effect until August 13, 1986, a date subsequent to the District's plan being approved and the appropriation of the \$1.2 million.

Construing the language contained in Laws 1985, Ch. 177 ("Chapter 177"), the Act which authorized the State to pay and Washington to receive monies for the career ladder program, general rules of statutory construction require that the language being given its plain meaning. See e.g., Fagner v. Heckler, 779 F.2d 541 (9th Cir. 1985) (Unless otherwise defined, words in a statute will be interpreted as taking their ordinary, contemporary, common meaning.); State v. Wise, 137 Ariz. 266, 693 P.2d 921 (1985) (In context of statutory construction, it is proper to turn to overall purposes and aims of legislature in enacting statute in order to glean legislative intent.) A review of certain provisions, sections 1(3) and 3, uphold the conclusion that the monies appropriated for 1986-87 are in no way jeopardized by the Committee's recent decision.

Sec. 1

3. For all fiscal years after 1985-86, school districts which wish to continue to budget for career ladder programs as provided in paragraph 1 of this section may revise their budgets after a public hearing by September 30, 1985 to include the amount approved. (Emphasis added.)

Sec. 3

School Districts which receive approval to budget for career ladder programs as provided in Section 1 of this act may calculate their budgets using an increase in the base level as follows:

. . .

2. For fiscal year 1986-1987, 2.5 per cent.

. . .

(Emphasis added.)

This Act, in its successor form, is codified in Chapter 9 of Title 15 - School District Budgeting and Financial Assistance. In section 15-901 which sets forth the definitions for use in Title 15 appear the following terms:

A.3. "Budget year" means the fiscal year for which the school district is budgeting and which immediately follows the current year.

A.5. "Current year" means the fiscal year in which a school district is operating.

A.R.S. § 15-101(b) defines "Fiscal year" as meaning "the year beginning July 1 and ending June 30." These provisions all agree that a district's budget when set is set for a full 12 month period. There is no language in either Chapter 177 or Chapter 364 which empowers the legislature to cease payments during the current year because a school district has failed to have its program approved for the following fiscal year.

The legislature after having authorized Washington to increase its salary base level by \$1.2 million for the 1986-87 school year cannot, part way through that school year, rescind the authorization. The District has binding employment contracts with over 1,100 teachers for fiscal year 1986-87 and is entitled to rely on the State's continuing obligation to make the agreed to appropriations until June 30, 1987.

B. Whether the \$1.2 Million Appropriated to Washington in 1986-87 Has Become a Continuing Element of the District's Base Salary Level Computation.

Washington's base salary level for the 1986-87 school year included \$1.2 million of career ladder monies. The issue is whether the 1986-87 base level budget can be retained even though career ladder participation will not exist in the 1987-88 school year. The Act does not address this factual circumstance and it is not apparent that the Legislature ever considered that Washington's situation would occur. The only reasonable construction of the career ladder legislation (specifically § 6.1 of Ch. 364) is that once a school district participates in the career ladder program and receives an increase in its base salary level, that district may include that amount in its base level for salary determination. This construction avoids a penalty imposed on the teachers and District for participating in the career ladder program. The "penalty" appears to be contrary to the intent of the career ladder program.

1. General Rules of Law Governing Statutory Construction.

The cardinal rule of statutory interpretation is to determine and give effect to the legislative intent behind the statute. Calvert v. Farmers Insurance Co. of Arizona, 144 Ariz. 291, 697 P.2d 684 (1985). A court may be aided in making its determination of what the legislative intent was in enacting a certain statute by considering (1) the context of the statute; (2) the language used; (3) the subject matter; (4) historical background; (5) the effects and consequences of the act; and (6) the spirit and purpose of the law. Arizona Newspaper Association, Inc. v. Superior Court in and for Maricopa County, 143 Ariz. 560, 694 P.2d 1174 (1985). Of these factors, the language used within the statute is considered to be the most reliable evidence of the Legislature's intent. State ex rel. Corbin v. Pickrell, 136 Ariz. 589, 667 P.2d 1304 (1983). However, when the words of the statute do not disclose the legislative intent, the court must look to the other factors outlined above. Kriz v. Buckeye Petroleum Co., Inc., 145 Ariz. 374, 701 P.2d 1182 (1985). The court should also look to the policy behind the statute and the evil which it was designed to remedy. Calvert v. Farmers Ins. Co., supra. Where the language of the statute is susceptible to several interpretations, the court will adopt the one which is reasonable and avoid an absurd result. Gortarez By and Through Gortarez v. Smitty's Super Valu, Inc., 140 Ariz. 97, 680 P.2d 807 (1984). The court may not, however, read into the statute matters which do not fall within the express provisions. City of Phoenix

v. Donofrio, 99 Ariz. 130, 407 P.2d 91 (1965). With these guidelines in mind, this memorandum will address the strengths and weaknesses of the District's interpretation of the Act.

2. The \$1.2 Million Appropriation is Ongoing.

The Committee did not approve the District's career ladder proposal for 1987-88. In its letter to Dr. Fick informing him of this decision, the Committee used the following language: "[The Committee] did not approve Washington School District's application to continue to budget to implement its career ladder program for fiscal year 1987-88. . . ." The District will not receive the additional monies that Chapter 364, section 6 provides for (i.e., for fiscal year 1987-88 Districts may calculate their budgets using a 3.7% increase in their base salary level figures).

All provisions of the Education Title (A.R.S. § 15-107 et seq.) should be read together to derive their true meaning. King v. Henderson, 5 Ariz. App. 95, 423 P.2d 370 (1967). The District's right to receive the \$1.2 million appropriation arises from the language of the Career Ladder Act (Chapter 364), the "regulations" promulgated by the Joint Legislative Committee and Title 15.

There is a statutory prohibition on Washington's Governing Board to reduce the salaries of its teachers. As provided in A.R.S. § 15-544(A):

A governing board may reduce salaries or eliminate certificated teachers in a school district in order to effectuate economies in the operation of the district or to improve the efficient conduct and administration of the schools of the school district, but no reduction in the salary of a certificated teacher who has been employed by the school district for more than the major portion of three consecutive school years shall be made except in accordance with a general salary reduction in the school district by which he is employed, and in such case the reduction shall be applied equitably among all such teachers.

(Emphasis added.) This statutory provision is an express limitation on the powers of the Governing Board. If a reduction in salary is to be made it must be done in strict accordance with the terms of A.R.S. § 15-544. Carlson v. School District No. 6 of Maricopa County, 12 Ariz. App. 179, 468 P.2d 944, 947-48 (1965)

(construing A.R.S. § 15-257, the predecessor to the present statute).

Washington has no overriding need to "effectuate economies in the operation of the District or to improve the efficient conduct and administration of its schools." Rather, in preparing its proposed budget for the 1987-88 school year, the District needs to know the figure to include for salaries. The District is without lawful authority to reduce the salaries of its certificated teachers and, thus, is relying reasonably on the belief that the appropriated \$1.2 million for 1986-87 which was included in its base salary level will continue to be included in subsequent fiscal years.

The failure of the State to appropriate the monies to Washington would result in only the salaries of the teachers participating in the career ladder program being reduced. This type of reduction is unlawful as § 15-544 provides that the reduction must be applied equitably among all the teachers. See Carlson, supra, 468 P.2d at 948 (the restrictive language of the statute requiring that any reduction in salary must be part of a general salary reduction applied equitably among all teachers is to prevent its use in discriminating against individual teachers and thus indirectly circumvent the other limitations of the Teacher's Tenure Act); Board of Education, Tucson High School District No. 1 v. Williams, 1 Ariz. App. 389, 403 P.2d 324, 328 (1965) (Section should be given liberal interpretation to carry out its obvious purpose to protect teachers from arbitrary reductions in salary.)

Given its ordinary meaning, the Committee's language "[the Committee] did not approve Washington School District's application to continue to budget to implement its career ladder program for fiscal year 1987-88. . . ." states merely that the District is not authorized to "calculate [its] budget using an increase in the base level as follows: for fiscal year 1987-88, 3.7 per cent" per the provision of § 6 of Chapter 364. That Washington may not increase its base salary level by 3.7 percent does not suggest that it is required to fall back to the base salary level figure used in its 1985-86 school year budget.

The Legislature provides the formula for calculating "base level" at A.R.S. § 15-901(B). The subparagraph which applies to determining the base level figure for 1987-88 provides that:

Beginning with fiscal year 1985-86, the base level for the prior year increased by the

growth rate as prescribed in subdivision (f)
of this paragraph.

(Emphasis added.) Once the \$1.2 million was incorporated into the \$25 million plus base level for fiscal year 1986-87 that merger resulted in a single and indivisible base level figure for use in calculating the following year's base salary level. The legislature's intent to implement the career ladder program statewide and to compensate teachers primarily on their teaching ability requires that the District continue to receive and include the \$1.2 million as part of its base salary level to avoid penalizing participants in a legislative experiment.

Since 1984, the legislature has on an annual basis enacted legislation to implement a pilot career ladder program. Laws 1984, Ch. 346; Laws 1985, Ch. 177; Laws 1986, Ch. 364. Each act has clearly stated its objective to be the permanent abandonment of a compensation system based on seniority and the adoption of a merit pay system. Ch. 346, § 6(B); Ch. 177, § 2(7); Ch. 364, § 5(7). In order to accomplish this goal the legislature recognized that additional funding would be required by the districts. See Ch. 346, § 4(5), § 6(8); Ch. 177, § 3; Ch. 364, § 6. It was the further intention of the legislature that teachers participating in the career ladder would not take a cut in salary in the transition stage. This concern is clearly set forth in the requirements promulgated and adopted by the Joint Legislative Committee on October 1, 1986:

1. . . . In determining the actual salary of a teacher placed on the ladder, current salary on the traditional salary schedule may be taken in its consideration as follows:

a. If the district wishes to do so, teachers may be given the higher of their career ladder performance salary or what their salary would be on the traditional salary schedule during the first three years of implementation of the career ladder salary system. This three-year period applies also to individual teachers in that they may receive the traditional salary schedule amount for as many of the three years as they are on the ladder; thereafter they must be given their career ladder performance salary or their previous year's traditional salary schedule amount plus cost of living, whichever is higher.

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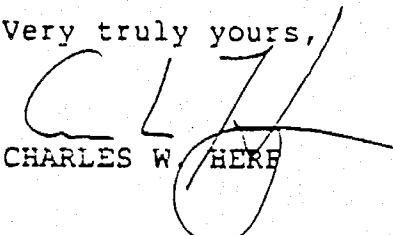
The Committee's intent to insure that no teacher is penalized for participating in the career ladder program should be given effect in our circumstances. The December 29th letter informing the District of the fact that its plan had not received approval for the following school year also states:

We very much appreciate the efforts which your district has made in developing your Career Ladder Program and we regret the events that prevented your continued participation in the pilot program. We wish you the best as you continue to implement your program.

The Committee's comments are instructive for they reveal the belief that Washington will not revert back to the traditional lock-step system of compensation but rather will continue to evaluate and pay its teachers under the career ladder system. The only manner by which this belief can be realized is if the District's base salary level for 1987-88 is calculated per the provisions of § 15-901(B)(2)(e) and the \$1.2 million has been incorporated into the "base level for the prior year."

We are of the opinion that the State Department cannot recoup the \$1.2 million grant for the 1986-87 career ladder program. Further, the 1987-88 budget should utilize the \$1.2 million as a part of the base level for determining teacher's salaries. This interpretation would give effect to career ladder and general budgetary statutes, as well as legislative intent. After you have had an opportunity to review the content of this letter, please feel free to contact me with any questions. We are, as requested, transmitting a copy of this letter to the Arizona Attorney General for review pursuant to A.R.S. § 15-253.B.

Very truly yours,


CHARLES W. HERE

CWH/kw